

Received

FEB 23 2015

Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
Library of Congress  
Washington, D.C.

Copyright Royalty Board

*In re*

DETERMINATION OF ROYALTY  
RATES AND TERMS FOR  
EPHEMERAL RECORDING AND  
DIGITAL PERFORMANCE OF SOUND  
RECORDINGS (*WEB IV*)

DOCKET NO. 14-CRB-0001-WR  
(2016-2020)

WRITTEN REBUTTAL STATEMENT OF  
SOUNDEXCHANGE, INC.

Volume 1: Introductory Materials

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February 23, 2015

PUBLIC VERSION

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**14-CRB-0001-WR (2016-2020)**

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**PUBLIC VERSION**

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## I. INTRODUCTION

The written direct cases of SoundExchange and the Services presented two very different versions of the market. SoundExchange's witnesses came from all parts of the recorded music industry: "major" labels, independent labels, artist managers, and performers. They testified about trends not only in the negotiation of agreements but in consumer behavior. SoundExchange presented a detailed view of the "thick market" as a whole—an analysis of hundreds of marketplace agreements that serve as the most directly relevant evidence of the rates and terms willing buyers and willing sellers would agree to in a market unconstrained by the statutory license. SoundExchange's rate proposal is grounded in this and other evidence, in line with rates established in prior proceedings, and necessary to ensure fair treatment for all stakeholders (artists, copyright owners, and the Services themselves) as the market for music consumption rapidly moves to a music-access model.

The Services, in contrast, presented a very different written direct case. Their proffered marketplace consists of a grand total of 29 direct licenses, all of which (the evidence shows) the Services negotiated in the shadow of the statutory license and for the express purpose of presenting them as benchmarks in this proceeding. The terms are very different from the hundreds of marketplace agreements that SoundExchange submitted, and for good reason. The agreements—sponsored by just two of the Services (iHeart and Pandora)—are overwhelmingly with independent labels. Even the one agreement that iHeart secured with a major record company (Warner Music Group) contains terms that could not possibly be offered to all record companies (as required by the statutory license), because it is premised on [REDACTED], and iHeart cannot make a similar promise to everyone. Moreover, as discussed herein, the Services' economic analysis of the submitted agreements fails to

withstand scrutiny.

To further support these proposed benchmarks, the Services contend they can “manipulate” listeners’ experience—*i.e.*, they purportedly can “steer” listeners to the sound recordings of particular licensors allegedly willing to accept below market. According to the Services, this proves that the Services (the willing buyers) could drive rates down by trading financial remuneration for webcasting market share. Oddly, the Services routinely say, including in their testimony here, that their algorithms are driven by their users’ thumbs rather than the Services’ contracts; but for purposes of rate-setting, the Services now say they can, do and will manipulate the code and what their users hear in order to reward favored licensors and punish the disfavored. In the end, even this gambit is for naught, because the Services’ litigation-driven “experiments” showed that their ability to “steer” is highly constrained – at least if the Services want to retain their users. In the end, all of the Services’ machinations seek to direct the Judges to a radical so-called “reset”—proposals to plunge rates down dramatically from where they have been set in multiple proceedings, which would create an incredibly wide gap between the Services’ rates and the rates paid by numerous other marketplace participants.

The Services offer four categories of evidence, each of which is answered by SoundExchange’s witnesses in this written rebuttal case: (1) Proposed benchmarks consisting of direct licenses with a small number of copyright holders—while the same services continue to pay statutory rates to other sellers—paired with a critique of SoundExchange’s “interactive” benchmark agreements *in past proceedings*; (2) Claims that statutory services promote sales or other revenue streams, but no evidence that statutory webcasting promotes an expansion of revenues to the record industry; (3) Assertions that statutory webcasters can ill afford to pay higher rates, despite the undisputed evidence that increasing numbers of webcasters are using

the statutory license and revenues for webcasters continue to grow; and (4) Evidence related to the Services' contributions of technology and capital investment, without regard for the massive investments that record companies and recording artists have to make every year to develop the content at the core of the Services' offering.

This Introductory Memorandum offers a brief overview of our rebuttal testimony to each of these four categories of evidence, followed by a summary of the testimony offered by each of SoundExchange's witnesses in rebuttal.

## **II. OVERVIEW OF SOUNDEXCHANGE'S REBUTTAL CASE**

### **A. The Services' Proffered Benchmarks Do Not Reflect Terms a Willing Buyer And Willing Seller Would Negotiate Outside the Shadow of the Statutory License.**

SoundExchange's expert, Dr. Rubinfeld, analyzed the thick market of available direct licenses and concluded that licenses for on-demand services, appropriately adjusted to discount for pure interactivity, are the most comparable benchmarks for this rate-setting proceeding. Dr. Rubinfeld concluded that these directly negotiated agreements are more reliable benchmarks than ever before. Services previously categorized as "interactive" and "non-interactive" are now rapidly converging: the functionality of each type is moving quickly to take on features and attributes of the other. Non-interactive services with a substantial degree of customization and personalization come closer today to replicating the experience of on-demand services. Streaming services of both types are commonly available on the same platforms, including most notably mobile. As a result of this convergence, statutory and non-statutory services compete more than ever before for the same audience. That convergence will only continue to grow over the next rate term.

The benchmark agreements that Dr. Rubinfeld analyzed were negotiated between willing buyers and sellers without the direct compulsion of the statutory license. The differences in rights conferred between the two types of licenses are addressed by careful and conservative adjustments, supported by market evidence. And Dr. Rubinfeld confirmed his analysis with corroborative marketplace evidence beyond the direct licenses themselves—further demonstrating the soundness of SoundExchange’s rate proposal.

In contrast, the Services’ benchmark analysis instead comprises fewer than 30 agreements, almost all of which are with independent record labels, and all of which are derivative of the existing statutory rates. In its rebuttal case, SoundExchange shows that the services’ proposed benchmarks are flawed for several reasons, including:

*First*, the Services’ proffered benchmarks do not reflect a marketplace “in which no statutory license exists.” *Web III Remand*, 79 FR at 23110. On the contrary, the rates in these agreements are intertwined with the statutory regime. Unless the focal point of the statutory rates should be the existing statutory rates—which the Services vigorously dispute—the focus must be on what willing sellers and buyers agree to in a market *without* a statutory license, not a market *derived from* the statutory license.

The Services’ primary benchmarks, however, are indisputably derived from existing statutory rates. The proffered license between Pandora-MERLIN contains [REDACTED]. [REDACTED]. Charlie Lexton, one of MERLIN’s two negotiators, will explain that the Pandora-MERLIN license depends entirely on the statutory licensing scheme: [REDACTED]

[REDACTED]

[REDACTED]

In



fact, the [REDACTED]

[REDACTED]

In other words, the deal does not reflect independently negotiated rates separate from the statutory license – it directly reflects the statutory rates that Pandora currently pays.<sup>1</sup> Beyond that, and as described throughout the rebuttal case, Pandora’s claim that it should be able to receive a lower rate if it is willing to manipulate its users’ experience through “steering” music to gain contractual advantages is—irrespective of other issues—an advantage that Pandora does not and cannot transfer to the market as a whole.

iHeartMedia’s 28 direct licenses suffer from the same defects. As the evidence shows, iHeart’s purpose with each was to negotiate a discount from the existing statutory broadcaster rates it pays for non-simulcast custom webcasting. In each license, the stated rates are either [REDACTED]

[REDACTED]

[REDACTED].

These statutorily derivative rates are not market based and reveal little, if anything, about what willing buyers would pay willing sellers in the absence of a statutory license.

*Second*, to divine a favorable valuation, the Services’ experts ignore key provisions that confer value to the content owners and that were indispensable to the agreements ever being executed. The points the Services’ experts say control their analyses were not part of the actual negotiations, and there is no reason to believe they ever would be in the future. For example, iHeartMedia’s economists attempt to create an artificial divide between “statutory plays” and “incremental plays,” valuing statutory plays at a rate much higher than the so-called “incremental

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<sup>1</sup> In fact, the Pandora-MERLIN agreement is a thinly veiled effort by Pandora to put the Pureplay Settlement rates into the record of this proceeding, even though by statute those rates may not be considered in this proceeding.

plays.” The true measure of the exchange must consider all aspects of the deal, but iHeart’s experts ignore or do not value numerous elements of the agreement that had significant value for Warner and the 27 independent record labels.

*Third*, both the iHeartMedia and Pandora-MERLIN deals offer benefits to record companies that cannot be replicated across the industry and are not available under the statutory license. For instance, the agreements offer “steering” benefits without which the counterparties would not have agreed to the terms. “Steering” is the purported ability, as one Pandora witness says, to “manipulate” a consumer’s listening experience to play sound recordings that are contractually advantageous to the service. But these steering benefits cannot be extrapolated industrywide. Simply put: Pandora and iHeart cannot agree to play *everyone’s* music more than anyone else’s music. The Services’ proposed benchmark agreements contain a host of other first-mover incentives that the Services could not repeat industrywide. And the purported benchmarks represent a small percentage of performances on each service and a tiny fraction of the total universe of licenses between record companies and streaming services. For instance, by Pandora’s own admission, a focus on the Pandora-MERLIN license would ignore roughly [REDACTED] of the performances on the Pandora service. A license that cannot be translated to account for the fact that the statutory license binds and benefits all record companies is little more than a ticket good for one ride only.

SoundExchange’s economists Dr. Rubinfeld and Dr. Talley, supported by numerous fact witnesses, will offer testimony demonstrating that the Services’ benchmarks simply do not stand for what the Services say they do. The licenses that Dr. Rubinfeld analyzed cut across the entirety of the market; they are not isolated one-off deals. The agreements were negotiated by and among multiple market players. And they represent true willing buyer/willing seller

transactions in an effectively competitive market unconstrained by the statutory license. Especially in view of the increased convergence in offerings that make these deals more compelling than ever before, the Services' challenges to SoundExchange's benchmarks fail.

**B. The Services Fail to Show That Statutory Services "Promote" Overall Sales or Other Revenue Streams.**

The Services spend significant time arguing that statutory webcasting promotes record sales and does not interfere with other revenue streams. The Services claim they are no different in this regard than terrestrial radio, which does not pay for the content it performs and which the Services claim returns huge promotional benefits. Conversely, the Services contend that SoundExchange's benchmark agreements with on-demand streaming services should be ignored, because those services substitute for record sales.

SoundExchange's rebuttal witnesses demonstrate that the Services' claims regarding promotion and substitution are misguided and fail to undermine SoundExchange's benchmark analysis.

*First*, statutory webcasting does not whet the consumer's appetite in sound recordings; it serves the meal. As, Dennis Kooker, President, Global Digital Business and U.S. Sales for Sony Music Entertainment, will explain, statutory webcasters increasingly offer functionality approaching that of on-demand services. Statutory services offer a highly personalized experience and the ability to create individual "stations" that provide the user with the ability to narrow the webcast to the specific songs individual users want to hear.

*Second*, and unsurprisingly in light of this convergence, statutory services are substitutional of revenue from interactive services. SoundExchange's expert, Sarah Butler, surveyed consumers to determine what other form of listening to music (if any) they would turn to if they could not listen to Pandora or iHeartRadio. The largest percentage of users would

otherwise listen to “interactive” services like Spotify if Pandora were no longer available. A much smaller percentage of users would otherwise listen to terrestrial radio. Thus, consumer evidence proves webcasting services are in competition with and are a substitute for “interactive” services, *not* terrestrial radio.

*Third*, the Services fail in their effort to show that statutory services promote download sales. The substantial evidence produced in this proceeding shows that streaming services, including statutory services, negatively impact sales of CDs and downloads. Pandora witness Stephan McBride’s “Music Sales Experiments” do not prove otherwise. Dr. McBride purported to analyze diversionary promotion—the extent to which Pandora performances might boost the sale of certain sound recordings at the expense of others. SoundExchange’s expert, David Blackburn, explains that this is the wrong question. The increased revenue that matters here is revenue that expands the total return to the music industry. Only such expansionary promotion would lead willing sellers industrywide to lower rates because of higher overall return from the willing buyers’ services. None of the Services provide any evidence that the services provide expansionary promotion, which is unsurprising given the continuing contraction of recorded music revenues.

*Fourth*, The Services misunderstand notions of “promotion” and “substitution” as they relate to interactive services. As SoundExchange witness, Jennifer Fowler, Senior Vice President, U.S. Marketing and Revenue Generation for Sony Music, explains, record labels promote new tracks and artists to interactive services because that promotion drives additional streams on those services—which deliver significantly higher average revenue per user than do statutory services. Simply put, statutory services as well as direct-licensed streaming services

are a consumption platform in and of themselves, and record labels treat them accordingly as a source of direct revenue – not as an opportunity to promote other streams of revenue.

**C. The Services' Claims of Poor Financial Health Do Not Justify Their Below-Market Rate Proposals.**

The Services claim they cannot afford the current rates, much less an increase in rates. Outside of these proceedings, however, the Services are much more bullish about their financial viability. Many Services are already profitable or on the verge of tremendous profitability. The deferral of profitability thus far reflects strategic decisions to defer short-term gains in favor of long-term profits. SoundExchange's expert Thomas Lys analyzes Pandora's statements and documents and demonstrates the company deliberately deferred short-term monetization in order to grow its user base. That strategy has yielded dramatic increases in Pandora's revenues and listening hours, at the expense of short-term profitability. Pandora now is shifting from growth to monetization, increasing the price of its subscription product and gradually increasing its RPM (revenue per thousand hours of listening) for its advertising product. As market analytics demonstrate, and Pandora's executives acknowledge, Pandora is now poised to "move decisively and assertively to capture the enormous market opportunity before" it. (Brian McAndrews on Pandora's Feb. 15, 2015, Earnings Call.) And, contrary to Pandora's argument that *Webcasting III* rates would halt its growth, Pandora's Michael Herring said outside this forum that he did not "think it would be a problem" for Pandora to pay a 50% increase in rates—rates within the range of *Webcasting III*.

Prof. Lys further shows that the Services' arguments about impeded investment are wrong theoretically and factually. David Pakman—a witness for both iHeartMedia and the NAB—makes assumptions about the webcasting market that are inconsistent with available evidence. Contrary to Mr. Pakman's opinions about the business being unprofitable, statutory

webcasters continue to enter the market at high rates. Unprofitable, failing industries do not see entry growth.

By relying on profitability as the measure of an appropriate rate, Mr. Pakman essentially expects copyright owners to subsidize these strategic business decisions of webcasters to defer profitability in favor of short-term growth. That is not the standard that Congress has set. Copyright owners must be compensated, fairly, for the use of their works. They should not be compelled to do so at a reduced rate in order to guarantee a particular margin, when that margin is entirely the result of a business plan the copyright owners have had no say in creating.

**D. Recording Artists And Copyright Owners' Relative Contributions Far Outweigh Those Of The Services.**

Finally, both SoundExchange and the Services submitted evidence in their direct cases of their relative contributions to the copyrighted work and the service made available to the public. Comparing these relative contributions reveals that the balance of creative contributions, technological contributions, capital investment and risk tips sharply toward the artists and copyright owners. iHeart and the NAB described their efforts to craft programming around music and to provide a source of community connection. Pandora touted its Music Genome Project, and its investments in the development of its algorithm. And Pandora also expounds on its accomplishments in creating an advertising market for services like itself, despite advertiser resistance.

The investments the Services describe pale in comparison to the hundreds of millions of dollars the record labels have invested in developing new music, and to the risk that is inherent in finding the next big thing. That is an investment and a risk the Services need not take – they only need play what has already become successful. The Services do not have to put the creative energy, passion, risk and investment into creating the recordings, a point underscored

in the testimony of SoundExchange rebuttal witness and independent artist Doria Roberts. None of the Services' proffered contributions compares to the creative contributions made every day by recording artists and record labels who create, market and distribute the music that is the core of a statutory services' offering.

**III. SUMMARY OF SOUNDEXCHANGE'S WITNESSES' REBUTTAL TESTIMONY**

SoundExchange's rebuttal case includes the written testimony of the following 12 fact and 6 expert witnesses.

**A. Fact Witnesses**

Dennis Kooker is President, Global Digital Business and U.S. Sales, for Sony Music Entertainment ("Sony Music"). The Global Digital Business Group handles digital distribution and sales initiatives on behalf of each of Sony's various label groups in the United States. Mr. Kooker's rebuttal testimony responds to arguments made by the Services that statutory webcasters compete directly with terrestrial radio, not interactive services, for listeners. He demonstrates—through examples and experiments—how statutory services have converged with on-demand services in recent years. Far from the experience of listening to terrestrial radio, statutory services of all types have evolved such that the user experience approaches an interactive listening experience. As a result, streaming services of all types compete for consumers, making Sony Music's agreements with interactive services the best available benchmark evidence for the rates and terms to which willing buyers and willing sellers would agree for the right to stream sound recordings.

Mr. Kooker's testimony also provides some insights into Sony Music's negotiations with interactive services revealing that the agreements reached represent give-and-take from both sides. While the Services' expert witnesses attempt to dismiss these negotiations as one-

sided, Mr. Kooker's actual experience negotiating with interactive services proves that is not so and that these proposed benchmark agreements are competitive.

Aaron Harrison is Senior Vice President, Business & Legal Affairs, Global Digital Business, UMG Recordings, Inc. ("Universal"). He is responsible for negotiating Universal deals with numerous digital services, including online streaming services. Mr. Harrison's rebuttal testimony addresses the "steering" that Pandora and iHeart argue creates a fundamentally different negotiation from those that occur with interactive streaming services. Mr. Harrison explains that interactive services can also "steer" and that UMG has sought to prevent such discrimination through its agreements. Contrary to Pandora and iHeart's arguments that record labels would compete, driving down the price for non-interactive streaming, Mr. Harrison testifies that UMG would most likely seek protections—the same protections as it seeks from interactive services—against such steering as a key term of the agreement.

Mr. Harrison also provides examples from his negotiating experience of core financial terms on which UMG conceded to reach an agreement. His testimony explores a hypothetical negotiation with one of the statutory services, like Pandora, absent the statutory license, and concludes that the ultimate agreement would most closely resemble those UMG reaches with interactive services. Finally, Mr. Harrison provides necessary context to Profs. Fischel and Lichtman's conclusion from a term sheet exchanged between UMG and iHeartMedia that simulcast services are not amenable to paying statutory royalties through a greater-of rate structure.

Ron Wilcox is Executive Counsel, Business Affairs, Strategic and Digital Initiatives for Warner Music Group ("Warner"). Mr. Wilcox's rebuttal testimony responds to assertions made by Profs. Fischel and Lichtman regarding Warner's direct agreement with iHeartMedia, and the



per-performance rate that Profs. Fischel and Lichtman purport to derive from that agreement.

Mr. Wilcox explains that Profs. Fischel and Lichtman's hypothesis of the parties' negotiation has no basis in the actual negotiation, Warner's modeling of the agreement, or the agreement itself.

Mr. Wilcox further explains how the terms of the actual agreement undermine Profs. Fischel and Lichtman's purported per-performance rate. Mr. Wilcox also discusses numerous terms of value in the agreement that Profs. Fischel and Lichtman either ignore or make no attempt to value in their per-performance rate analysis.

Mr. Wilcox's rebuttal testimony also provides factual information responding to the Services' erroneous claim that direct licenses with interactive services are not the product of a workably competitive market. Mr. Wilcox discusses actual experiences of Warner negotiations that demonstrate significant give-and-take on both sides of the negotiating table.

Charlie Lexton is the Head of Business Affairs and General Counsel at MERLIN, and was one of the two people at MERLIN primarily responsible for negotiation of MERLIN's recent license with Pandora. Having negotiated the license, he explains why it cannot support the rate proposals offered by Pandora or iHeartMedia. His testimony includes a detailed look at all of the aspects of the license – and their relationship to each other – a look that was not provided by Pandora or its economists. Mr. Lexton explains that the license was inextricably bound up with the existing rates that Pandora pays and that much of the consideration received by MERLIN members is not portable to the statutory license. He further explains how the effective compensation under the license is no lower than that which Pandora pays under the statutory license. Finally, he reports that several aspects of the license make an evaluation of its effective value per performance impossible at this time.

Glen Barros is the President and Chief Executive Officer of the Concord Music Group

("Concord"), a position he has held for twenty years. His testimony will explain the nature of the bargain in Concord's license with iHeartMedia, one of the 27 independent licenses that iHeartMedia lumps together. Mr. Barros will explain that the nature of the license was to enshrine a unique bargain in which Concord received value — [REDACTED]

[REDACTED] — that is not part of the statutory regime. Mr. Barros will also explain his view that webcasting is increasingly substitutional.

Simon Wheeler is the Director of Digital at the Beggars Group, one of the largest collections of independent record labels in the world. Mr. Wheeler will explain that the Pandora-MERLIN license that Beggars Group participates in is not the result of free market negotiations but rather experimentation with direct licensing under and during the terms set by the existing statutory license. He will describe how the value of that license is in opportunities that exist outside of, and cannot be imported to, the statutory license.

Darius Van Arman is the co-founder and co-owner of Secretly Group, a collection of prominent independent record labels in the United States, as well as their affiliated companies, including independent distributor SC Distribution. Having been referred to by Pandora in their direct case for his label's participation in the Pandora-MERLIN license, he will explain that direct license participation does not imply that a license is a strong basis for the statutory rate. He will explain why contractually based steering undermines the value of a direct license in informing the statutory license. Also, he will explain that the Pandora-MERLIN license is derived almost entirely from the existing rates Pandora pays. Finally, Mr. Van Arman will explain that there is a significant lack of operational certainty about the license itself, which weakens its ability to inform rates set by this proceeding.

Jim Burruss is Senior Vice President, Promotion Operations at Columbia Records, one of the recorded music labels within Sony Music Entertainment (“Sony Music”). In that position, Mr. Burruss oversees all of Columbia’s promotional operations, which include but are not limited to promotion to terrestrial radio. Mr. Burruss’s rebuttal testimony responds to the Services’ contention that statutory webcasting has whatever promotional benefits airplay on terrestrial radio provides. Mr. Burruss explains that there are fundamental differences in this regard between terrestrial radio and both Internet simulcasts and custom radio.

Jennifer Fowler is Senior Vice President, U.S. Marketing and Revenue Generation, Sony Music Entertainment (“Sony Music”). Ms. Fowler oversees all marketing functions within the Sony Music U.S. Sales division, including retail and brand marketing, and insights and analytics. Ms. Fowler’s rebuttal testimony responds to the Services’ assertions—and particularly those made by Pandora’s Timothy Westergren and Simon Fleming-Wood—that webcasting on statutory services promotes revenue generation from other sources for record companies. Ms. Fowler explains why Pandora and other statutory services are consumption platforms that substitute for other sources of revenue, particularly interactive subscription services, which generate significantly higher average revenue per user (“ARPU”) returns. Ms. Fowler further responds to the Services’ assertions that interactive subscription services do not provide promotional benefits. Ms. Fowler discusses editorial and related features of interactive services that are highly promotional of artists and that generate high ARPU returns.

Michael Huppe is the President and Chief Executive Officer of SoundExchange. Mr. Huppe will address the direct case testimony of witnesses from the National Association of Broadcasters and Sirius XM about the agreements they reached with SoundExchange in 2009. Mr. Huppe will demonstrate how the suggestion that SoundExchange had or exerted

monopoly power is plainly contradicted by the facts surrounding each agreement.

Jonathan Bender is the Chief Operating Officer of SoundExchange. His testimony responds to the Services' proposed changes to the terms that govern the statutory license. Mr. Bender explains that these proposals – most of which are unsupported by testimony– would make the administration of the statutory license more costly, less efficient, and less fair to artists and copyright owners.

Doria Roberts has been an independent recording artist for over twenty years. On her own label Hurricane Doria Records, Ms. Roberts has released several of her own CDs and toured in support for many years, performing at venues across the United States and Canada. Ms. Roberts has performed at festivals such as Lilith Fair, the Michigan Womyn's Festival, the Montreaux Jazz Festival, and many more. Mr. Roberts responds to testimony from Tim Westergren, Tom Poleman, and others and offers her unique perspective on the creative contributions, risks and investments that she and other independent artists make to create the music that the Services depend on for their business. She testifies about the changes she has been forced to make to her own small business now that the market for sound recordings has shifted from one of "ownership" to one of "access."

**B. Expert Witnesses**

Daniel L. Rubinfeld, Robert L. Bridges Professor of Law, Professor of Economics, Emeritus, University of California, Berkeley, and Professor, NYU Law School, evaluates each of the benchmarks offered by the Services in the direct case and concludes that each is inconsistent with the willing buyer/willing seller standard. He observes that, in stark contrast to his own "thick market" analysis, the Services' collective reliance on a sum total of 29 market agreements – involving just two services and almost exclusively independent

labels – provides a remarkably shaky foundation from which to derive an industrywide statutory rate. Dr. Rubinfeld also emphasizes that each of the Services’ proffered deals should be immediately disqualified as benchmarks because they were negotiated in the direct shadow of the statutory license and were [REDACTED]. He further explains that the Services’ benchmarks are atypical deals involving forms of consideration that cannot be replicated across the entire industry or fairly compared to the statutory license.

Dr. Rubinfeld goes on to show that the Services’ rate calculations derived from these inappropriate benchmarks are themselves flawed. Profs. Fischel and Lichtman fundamentally distort the value of the iHeart-Warner agreement by focusing only on “incremental” plays, relying on one party’s subjective projections, misapplying the terms of the agreement, and failing to account for all of the consideration Warner received under the deal. Dr. Shapiro’s analysis of the Pandora-MERLIN deal is similarly flawed. Like Fischel and Lichtman, Shapiro inadequately accounts for the full bundle of consideration that was exchanged and the valuable first-mover advantages that were wrapped up in the Pandora-MERLIN deal.

Finally, Dr. Rubinfeld further demonstrates, as he did in his opening testimony, that direct licenses are the best available market evidence from which to determine a willing buyer/willing seller rate. He shows that the Services’ various critiques of the interactive benchmark are misplaced. And he offers additional market evidence—beyond the direct licenses themselves—that corroborates SoundExchange’s rate proposal. Dr. Rubinfeld demonstrates that recent licenses for non-interactive and/or ad-supported services that were negotiated in the less direct shadow of the statutory license contain rates that are consistent

with SoundExchange's proposal and substantially higher than those in the Services' proffered benchmarks.

Eric Talley, Rosalinde and Arthur Gilbert Foundation Professor of Law, University of California, Berkeley, provides a thorough critique of the economic analysis offered by Profs. Katz and Shapiro. Prof. Talley explains that both Katz and Shapiro adopt constrained conceptual frameworks that are inconsistent with bargaining theory, the market at issue in this case, and the willing buyer/willing seller standard. He notes, for example, that the Katz and Shapiro characterization of interactive licensing ignores how competitive forces in the consumer market constrain sellers' pricing power. Prof. Talley also explains that the Services' attempt to differentiate the interactive and non-interactive markets misses the mark. He shows that Pandora's own steering experiments demonstrate that the bargaining dynamic in the interactive market is much the same as the bargaining dynamic that would exist in the hypothetical non-interactive market. Prof. Talley also demonstrates that neither Katz nor Shapiro convincingly account for the distorting effect that the shadow of the statutory license has on negotiated transactions.

Prof. Talley sets forth a structural bargaining framework that directly responds to the economic question at issue in this proceeding. His bargaining model offers several key insights: (1) competitive forces in the downstream consumer market constrain the range of prices negotiated in the interactive service market; (2) the statutory license significantly distorts agreements that are negotiated in its shadow; and (3) when the rate available through the statutory license is sufficiently low, the downward biasing effect can be so great that it outmatches all other potential biasing effects, including any biasing effects created by disproportionate seller-side bargaining power. In light of the shadow from the statutory

license, Prof. Talley concludes that the Services' proffered benchmarks offer little probative value.

Thomas Z. Lys, Ph.D., is the Eric L. Kohler Chair in Accounting and Professor of Accounting and Information Management at the Kellogg School of Management, Northwestern University. Prof. Lys responds to the suggestion made by multiple witnesses in this proceeding—including David Pakman, Michael Herring, and the NAB's witnesses—that royalty rates should be set based on the current profitability of a specific webcaster or of the webcasting industry. Prof. Lys explains that, as a matter of basic economics, the Services' approach does not comport with the "willing buyer/willing seller" standard. Nor does this approach consider business strategies employed by firms that depress current profits in an effort to achieve growth.

Prof. Lys also provides a detailed financial analysis that disproves Michael Herring's claim that Pandora cannot afford to pay royalties set at the *Web III* level. As Prof. Lys's analysis shows, Pandora has turned a corner on profitability and has begun to "monetize" its large user base. This account is confirmed by Pandora's own public statements, its internal analysis, and analyst research, which all predict significant increases in the revenue Pandora generates from each hour of listening. Based on these increases, Pandora will comfortably be able to afford the rates in SoundExchange's rate proposal.

Prof. Lys also shows that Mr. Pakman's claims regarding unprofitability and lack of investment in the webcasting industry are inconsistent with contemporaneous evidence. He also shows that Mr. Pakman's analysis of venture capital investments in digital music fails to account for salient differences between digital music and the industries he analyzes. And Prof. Lys demonstrates that Mr. Pakman's analysis is irrelevant, because he fails to distinguish between digital music companies in general and statutory webcasters in particular.

Prof. Lys also demonstrates the invalidity of Profs. Fischel and Lichtman's Economic Value Added ("EVA") analysis. The EVA analysis ignores basic and fundamental concepts in economics relating to supply, demand, and market equilibrium. And, the EVA analysis is based on the economics of terrestrial radio. Prof. Lys shows why this approach ignores fundamental differences between the webcasting and terrestrial radio industries. Prof. Lys also demonstrates other serious flaws in how Profs. Fischel and Lichtman implemented their analysis. For example, eliminating a single significant outlier from the sample underlying this analysis results in *doubling* the predicted royalty rate.

Finally, Prof. Lys discusses a number of terms proposed by the licensee participants, including NAB's late fee proposal, NRBNMLC's tiered flat fee proposal, and Pandora's definition of revenue.

Marc Rysman, Professor of Economics at Boston University, explains that the webcasting industry exhibits characteristics that favor scale and market dominance. These characteristics—network effects, economies of scale, seller learning and switching costs—incite webcasters to adopt aggressive pricing strategies that sacrifice current or short-term profitability in exchange for growth and market leadership. Based on his observations of the webcasting industry, Prof. Rysman concludes that certain webcasters have, in fact, consciously pursued such growth-oriented strategies. Prof. Rysman's analysis refutes testimony offered by the licensee participants' witnesses that suggests that a webcaster's willingness to pay is constrained by its current profitability.

David Blackburn, Ph.D., is Vice President for NERA Economic Consulting and is based in NERA's Washington, DC, office. Dr. Blackburn analyzes the meaning of "promotion" in the context of these proceedings and specifically concludes—based in part



on Pandora's own internal documents—that Stephan McBride analyzed the wrong question. Dr. Blackburn explains the two concepts of promotion: *expansionary* which increases revenues to the industry as a whole, and *diversionary* which merely shifts revenues between copyright owners. Only the former informs the rate to be set in these proceedings—an industrywide rate.

Dr. Blackburn also concludes that McBride's study is flawed for a number of reasons and defied by market evidence and internal documents from the Services. Finally, Dr. Blackburn sheds light on a key aspect of the market for all streaming—including interactive streaming—piracy. Because consumers view piracy as an alternative to free and paid streaming, the price for licenses for interactive streaming are necessarily at competitive levels to compete with the prevalence of unlicensed services.

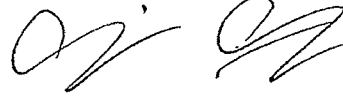
Sarah Butler M.A., is Vice President for NERA Economic Consulting and is based in NERA's San Francisco office. Ms. Butler responds to iHeart's witness, Tom Poleman, and in particular his use of survey evidence regarding terrestrial radio to conclude that simulcast streaming is promotional. Ms. Butler also analyzes evidence from a number of market and proprietary surveys demonstrating that webcasting services view interactive services as their closest competitor. Finally, Ms. Butler conducted her own survey which demonstrates that Pandora and iHeartRadio substitute for Spotify and other streaming services that pay higher rates to the recorded music industry.

Dated: February 23, 2015

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*Of Counsel*

Respectfully submitted,



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*Counsel for SoundExchange, Inc.*

Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
Library of Congress  
Washington, D.C.

*In re*

**DETERMINATION OF ROYALTY  
RATES AND TERMS FOR  
EPHEMERAL RECORDING AND  
DIGITAL PERFORMANCE OF SOUND  
RECORDINGS (*WEB IV*)**

**DOCKET NO. 14-CRB-0001-WR  
(2016-2020)**

**INDEX OF WITNESS TESTIMONY**

<b>WITNESS</b>	<b>TITLE</b>
Dennis Kooker	President, Global Digital Business & U.S. Sales, Sony Music Entertainment
Aaron Harrison	Senior Vice President, Business & Legal Affairs, Global Digital Business, UMG Recordings, Inc.
Ron Wilcox	Executive Counsel, Business Affairs, Strategic and Digital Initiatives, Warner Music Group
Charlie Lexton	Head of Business Affairs & General Counsel, Music and Entertainment Rights Licensing Independent Network ("Merlin")
Glen Barros	President and Chief Executive Officer, Concord Music Group, Inc.
Simon Wheeler	Director of Digital, Beggars Group
Darius Van Arman	Co-Founder & Co-Owner, Secretly Group
Jim Burruss	Senior Vice President, Promotion & Marketing Operations Columbia Records, Sony Music Entertainment

Jennifer Fowler	Senior Vice President, U.S. Marketing & Revenue Generation Sony Music Entertainment
Michael Huppe	President & CEO, SoundExchange, Inc.
Jonathan Bender	Chief Operating Officer, SoundExchange, Inc.
Doria Roberts	Independent Recording Artist, Hurricane Doria Records
Daniel L. Rubinfeld, Ph.D.	Robert L. Bridges Professor of Law and Professor of Economics Emeritus, University of California, Berkeley and Professor of Law, New York University
Eric L. Talley, Ph.D.	Rosalinde and Arthur Gilbert Foundation Professor of Law and Director of the Berkeley Center for Law, Business, and the Economy, University of California, Berkeley
David Blackburn, Ph.D.	Microeconomist and Vice President for NERA Economic Consulting
Sarah Butler, M.S.	Vice President, NERA Economic Consulting
Thomas Z. Lys, Ph.D.	Eric L. Kohler Chair in Accounting and Professor of Accounting and Information Management, Kellogg School of Management, Northwestern University
Marc Rysman, Ph.D.	Professor of Economics Boston University

Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
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DETERMINATION OF ROYALTY  
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(2016-2020)

PUBLIC VERSION

INDEX OF SOUNDEXCHANGE EXHIBITS

EXHIBIT NO.	SPONSORING WITNESS	DESCRIPTION	RESTRICTED/ PUBLIC
SX EX. 001-RP	Dennis Kooker	Exhibit 1 – “All About That Bass” Airplay Charts	PUBLIC
SX EX. 002- RP	Dennis Kooker	Exhibit 2 – “Lips Are Movin” Airplay Charts	PUBLIC
SX EX. 003- RP	Dennis Kooker	Exhibit 3 – iHeart – Meghan Trainor Station Experiment Methodology and Results	PUBLIC
SX EX. 004- RP	Dennis Kooker	Exhibit 4 – iHeart – Meghan Trainor Station Experiment Demonstration	PUBLIC
SX EX. 005- RP	Dennis Kooker	Exhibit 5 – iHeart – Top 20 Artists Experiment Methodology and Results	PUBLIC
SX EX. 006- RP	Dennis Kooker	Exhibit 6 – Pandora – Top 20 Artists Experiment Methodology and Results	PUBLIC
SX EX. 007- RP	Dennis Kooker	Exhibit 7 – Pandora – Top 20 Artist Experiment Demonstration	PUBLIC

EXHIBIT NO.	SPONSORING WITNESS	DESCRIPTION	RESTRICTED/ PUBLIC
SX EX. 008- RP	Dennis Kooker	Exhibit 8 – Pandora-Spotify Artist Recommendation Features	PUBLIC
SX EX. 009- RR	Dennis Kooker	Exhibit 9 – [REDACTED]	RESTRICTED
SX EX. 010- RR	Dennis Kooker	Exhibit 10 – [REDACTED]	RESTRICTED
SX EX. 011- RR	Dennis Kooker	Exhibit 11 – CD of Sony Music Agreements	RESTRICTED
SX EX. 012- RR	Aaron Harrison	Exhibit 1 – [REDACTED]	RESTRICTED
SX EX. 013- RR	Aaron Harrison	Exhibit 2 – [REDACTED]	RESTRICTED
SX EX. 014- RR	Aaron Harrison	Exhibit 3 – [REDACTED]	RESTRICTED
SX EX. 015- RR	Aaron Harrison	Exhibit 4 – [REDACTED]	RESTRICTED
SX EX. 016- RR	Aaron Harrison	Exhibit 5 – [REDACTED]	RESTRICTED
SX EX. 017- RR	Aaron Harrison	Exhibit 6 – [REDACTED]	RESTRICTED
SX EX. 018- RR	Aaron Harrison	Exhibit 7 – CD of Agreements	RESTRICTED
SX EX. 019- RR	Aaron Harrison	Exhibit 8 - Clear Channel Negotiations Recap Email	RESTRICTED
SX EX. 020- RR	Ron Wilcox	Exhibit 1 – [REDACTED]	RESTRICTED
SX EX. 021- RR	Ron Wilcox	Exhibit 2 – [REDACTED]	RESTRICTED
SX EX. 022- RR	Ron Wilcox	Exhibit 3 – [REDACTED]	RESTRICTED
SX EX. 023- RR	Ron Wilcox	Exhibit 4 – [REDACTED]	RESTRICTED
SX EX. 024- RR	Ron Wilcox	Exhibit 5 – [REDACTED]	RESTRICTED
SX EX. 025- RR	Ron Wilcox	Exhibit 6 – [REDACTED]	RESTRICTED
SX EX. 026- RR	Ron Wilcox	Exhibit 7 – [REDACTED]	RESTRICTED

EXHIBIT NO.	SPONSORING WITNESS	DESCRIPTION	RESTRICTED/ PUBLIC
SX EX. 027- RR	Ron Wilcox	Exhibit 8 – [REDACTED]	RESTRICTED
SX EX. 028- RR	Ron Wilcox	Exhibit 9 – [REDACTED]	RESTRICTED
SX EX. 029- RR	Ron Wilcox	Exhibit 10 – [REDACTED]	RESTRICTED
SX EX. 030- RR	Ron Wilcox	Exhibit 11 – [REDACTED]	RESTRICTED
SX EX. 031- RR	Ron Wilcox	Exhibit 12 - CD of Agreements	RESTRICTED
SX EX. 032- RR	Charlie Lexton	Exhibit 1– Pandora-Merlin Licence	RESTRICTED
SX EX. 033- RR	Charlie Lexton	Exhibit 2– E-mail from Charlie Lexton, May 15, 2014	RESTRICTED
SX EX. 034- RR	Charlie Lexton	Exhibit 3– Merlin Opt-In Notice re Pandora	RESTRICTED
SX EX. 035- RR	Charlie Lexton	Exhibit 4– [REDACTED]	RESTRICTED
SX EX. 036- RR	Charlie Lexton	Exhibit 5– Merlin Press Release	RESTRICTED
SX EX. 037- RR	Charlie Lexton	Exhibit 6– [REDACTED]	RESTRICTED
SX EX. 038- RR	Charlie Lexton	Exhibit 7– [REDACTED]	RESTRICTED
SX EX. 039- RR	Charlie Lexton	Exhibit 8– First Amendment to Pandora-Merlin Licence	RESTRICTED
SX EX. 040- RR	Charlie Lexton	Exhibit 9 – CD of Merlin Agreements	RESTRICTED
SX EX. 041- RR	Glen Barros	Exhibit 1 – Concord-iHeartMedia License, October 1, 2013	RESTRICTED
SX EX. 042- RR	Glen Barros	Exhibit 2 – Draft of Concord-iHeartMedia License – Concord Counterproposal	RESTRICTED
SX EX. 043- RR	Glen Barros	Exhibit 3 – Merlin Notification Concerning Pandora License	RESTRICTED
SX EX. 044- RR	Simon Wheeler	Exhibit 1 – Merlin Notification of Proposed Action Concerning Pandora	RESTRICTED
SX EX. 045- RR	Simon Wheeler	Exhibit 2 – CD of Beggars Group Agreements	RESTRICTED

EXHIBIT NO.	SPONSORING WITNESS	DESCRIPTION	RESTRICTED/ PUBLIC
SX EX. 046- RR	Jennifer Fowler	Exhibit 1 – Results of Jennifer Hudson Pandora Advertising Campaign	RESTRICTED
SX EX. 047- RR	Jennifer Fowler	Exhibit 2 – [REDACTED]	RESTRICTED
SX EX. 048- RP	Jennifer Fowler	Exhibit 3 – Filtr Playlist	PUBLIC
SX EX. 049- RR	Jennifer Fowler	Exhibit 4 – [REDACTED]	RESTRICTED
SX EX. 050- RR	Jennifer Fowler	Exhibit 5 – [REDACTED]	RESTRICTED
SX EX. 051- RP	Michael Huppe	Exhibit 1 – SoundExchange Initial Rate Proposal, <i>Webcasting III</i>	PUBLIC
SX EX. 052- RP	Michael Huppe	Exhibit 2 – NAB-SoundExchange Agreement	PUBLIC
SX EX. 053- RP	Michael Huppe	Exhibit 3 – NAB-SoundExchange Joint Motion to Adopt Partial Settlement, June 1, 2009	PUBLIC
SX EX. 054- RP	Michael Huppe	Exhibit 4 – NAB Petition to Participate	PUBLIC
SX EX. 055- RP	Michael Huppe	Exhibit 5 – Sirius-SoundExchange Agreement	PUBLIC
SX EX. 056- RP	Jonathan Bender	Exhibit 1 – SoundExchange Notice and Recordkeeping Reply Comments	PUBLIC
SX EX. 057- RP	Doria Roberts	Exhibit 1 – Doria Roberts Performance Video	PUBLIC
SX EX. 058- RR	Daniel Rubinfeld	Appendix 1 – [REDACTED]	RESTRICTED
SX EX. 059- RR	Daniel Rubinfeld	Appendix 2 – [REDACTED]	RESTRICTED
SX EX. 060- RR	Daniel Rubinfeld	Exhibit 1 – [REDACTED]	RESTRICTED



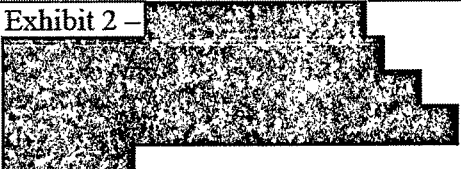

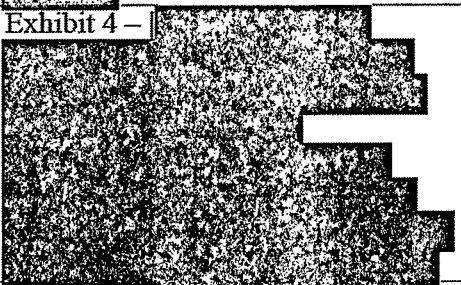
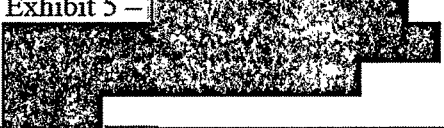




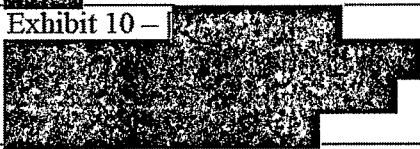
EXHIBIT NO.	SPONSORING WITNESS	DESCRIPTION	RESTRICTED/ PUBLIC
SX EX. 061- RR	Daniel Rubinfeld	Exhibit 2 – 	RESTRICTED
SX EX. 062- RR	Daniel Rubinfeld	Exhibit 3 – 	RESTRICTED
SX EX. 063- RR	Daniel Rubinfeld	Exhibit 4 – 	RESTRICTED
SX EX. 064- RR	Daniel Rubinfeld	Exhibit 5 – 	RESTRICTED
SX EX. 065- RR	Daniel Rubinfeld	Exhibit 6 – 	RESTRICTED
SX EX. 066- RR	Daniel Rubinfeld	Exhibit 7 – 	RESTRICTED
SX EX. 067- RR	Daniel Rubinfeld	Exhibit 8 – 	RESTRICTED
SX EX. 068- RR	Daniel Rubinfeld	Exhibit 9 – 	RESTRICTED
SX EX. 069- RR	Daniel Rubinfeld	Exhibit 10 – 	RESTRICTED

EXHIBIT NO.	SPONSORING WITNESS	DESCRIPTION	RESTRICTED/ PUBLIC
SX EX. 070- RP	Daniel Rubinfeld	Exhibit 11 - Correction of Fischel and Lichtman Exhibit F "Per-Performance Royalty Payment Sufficient to Compensate Copyright Holders for Hypothetical Loss of Other Revenue Due to Migration to Webcasting"	PUBLIC
SX EX. 071- RR	Daniel Rubinfeld	Exhibit 12 - [REDACTED]	RESTRICTED
SX EX. 072- RR	Daniel Rubinfeld	Exhibit 13 - [REDACTED]	RESTRICTED
SX EX. 073- RR	Daniel Rubinfeld	Exhibit 14 - [REDACTED]	RESTRICTED
SX EX. 074- RR	Daniel Rubinfeld	Exhibit 15 - [REDACTED]	RESTRICTED
SX EX. 075- RR	Daniel Rubinfeld	Exhibit 16 - [REDACTED]	RESTRICTED
SX EX. 076- RR	Daniel Rubinfeld	Exhibit 17 - [REDACTED]	RESTRICTED
SX EX. 077- RP	Daniel Rubinfeld	Exhibit 18 - Comparison of Subscription Services Pricing and Updated Interactivity Adjustment	PUBLIC
SX EX. 078- RR	Eric L. Talley	Exhibit 1 - [REDACTED]	RESTRICTED
SX EX. 079- RP	David Blackburn	Exhibit 1 - Appendix 1	PUBLIC
SX EX. 080- RR	David Blackburn	Exhibit 2 - Appendix 2	RESTRICTED
SX EX. 081- RR	David Blackburn	Exhibit 3 - Appendix 3	RESTRICTED
SX EX. 082- RR	David Blackburn	Exhibit 4 - Appendix 4	RESTRICTED
SX EX. 083- RP	Sarah Butler	Exhibit 1 - Butler CV	PUBLIC







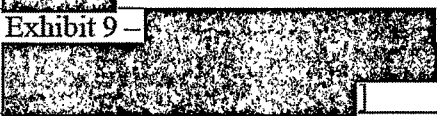
EXHIBIT NO.	SPONSORING WITNESS	DESCRIPTION	RESTRICTED/ PUBLIC
SX EX. 084- RR	Sarah Butler	Exhibit 2 – Materials Considered	RESTRICTED
SX EX. 085- RR	Sarah Butler	Exhibit 3 – Role of Radio Study	RESTRICTED
SX EX. 086- RR	Sarah Butler	Exhibit 4 – Role of Radio Tables	RESTRICTED
SX EX. 087- RP	Sarah Butler	Exhibit 5 – Survey Instrument	PUBLIC
SX EX. 088- RP	Sarah Butler	Exhibit 6 – Survey Tables	PUBLIC
SX EX. 089- RP	Thomas Lys	Exhibit 1 – Pandora 2014 10-K	PUBLIC
SX EX. 090- RP	Thomas Lys	Exhibit 2 – Pandora 2013 10-K	PUBLIC
SX EX. 091- RP	Thomas Lys	Exhibit 3 – Transcript of Pandora 2014 Earnings Call	PUBLIC
SX EX. 092- RP	Thomas Lys	Exhibit 4 – Transcript of Pandora Statement at Nomura’s Digital Media Conference, September 4, 2014	PUBLIC
SX EX. 093- RR	Thomas Lys	Exhibit 5 – Morgan Stanley, “Pandora Media Inc., Lower 4Q Results & Guide Highlight Slowing Usage Growth,” (February 6, 2015)	RESTRICTED
SX EX. 094- RR	Thomas Lys	Exhibit 6 – Cowen & Company, Pandora Media, 4Q14 Results and ’15 Guide Miss Expectations,” (February 6, 2015)	RESTRICTED
SX EX. 095- RP	Marc Rysman	Exhibit 1 – YouTube Features	PUBLIC
SX EX. 096- RP	Marc Rysman	Exhibit 2 – Pandora Customization	PUBLIC
SX EX. 097- RR	Marc Rysman	Exhibit 3 – 	RESTRICTED
SX EX. 098- RR	Marc Rysman	Exhibit 4 – 	RESTRICTED
SX EX. 099- RR	Marc Rysman	Exhibit 5 – 	RESTRICTED
SX EX. 100- RR	Marc Rysman	Exhibit 6 – 	RESTRICTED

EXHIBIT NO.	SPONSORING WITNESS	DESCRIPTION	RESTRICTED/ PUBLIC
SX EX. 101- RR	Marc Rysman	Exhibit 7- 	RESTRICTED
SX EX. 102- RR	Marc Rysman	Exhibit 8 - 	RESTRICTED
SX EX. 103- RR	Marc Rysman	Exhibit 9 - 	RESTRICTED

**DOCKET NO. 14-CRB-0001-WR  
(2016-2020)**

**DECLARATION AND CERTIFICATION OF KELLY M. KLAUS  
REGARDING RESTRICTED INFORMATION**

1. My name is Kelly M. Klaus. I am counsel for SoundExchange, Inc. (“SoundExchange”) in Docket No. 14-CRB-0001-WR (2016-2020). I respectfully submit this declaration and accompanying Redaction Log (Attachment A) to comply with the Copyright Royalty Judges’ Protective Order, dated October 10, 2014. I am authorized by SoundExchange to submit this declaration on its behalf.

2. Attorneys working under my direction and I have reviewed SoundExchange's written rebuttal statement, witness statements, exhibits, and redaction log, all of which are being submitted in this proceeding on February 23, 2015. Those attorneys and I also have reviewed the terms of the Protective Order.

3. After consulting with my client and the entities whose interests SoundExchange represents in this proceeding and who have provided confidential information for the preparation of this case, attorneys working under my direction and I have determined that portions of SoundExchange's written rebuttal statement, witness statements, and accompanying exhibits contain information that should be treated as confidential under the Protective Order.

Pursuant to the terms of the Protective Order, such confidential information has been designated and marked as "Restricted."

4. The Restricted information that SoundExchange is submitting includes, among other things, (a) materials or testimony relating to or constituting contracts, contract terms, or performance data that are proprietary, not publicly available, commercially sensitive, or subject to express confidentiality obligations in agreements with third parties; (b) materials or testimony relating to or constituting internal business information, negotiating positions, negotiation strategy, financial data and projections, and competitive strategy that are proprietary, not publicly available, or commercially sensitive; and (c) third party information provided in confidence, not publicly available, or subject to express confidentiality obligations.

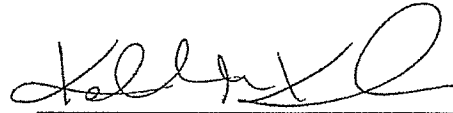
5. In addition, attorneys working under my direction and I have determined that portions of SoundExchange's written rebuttal statement, witness statements, and accompanying exhibits contain information previously designated "Restricted" by a participant in this proceeding pursuant to the terms of the Protective Order.

6. The public disclosure of the Restricted information that SoundExchange is submitting would be likely to cause significant harm. The disclosure would provide an unfair competitive advantage to competitors and/or current or future negotiating counterparties of those whose information would be disclosed. Many but not all competitors and counterparties also are parties to this proceeding. Public disclosure of this information also would place SoundExchange, the entities whose interests it represents and their business partners, and other entities at a significant commercial disadvantage and would pose serious risk to their business interests and strategies.

7. Pursuant to the terms of the Protective Order, SoundExchange is submitting under seal the materials designated Restricted and is redacting such materials from the Public version of its submission. Attachment A is a Redaction Log that identifies the Restricted materials in SoundExchange's submission and sets forth the basis for each designation.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: February 23, 2015



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*Counsel for SoundExchange, Inc.*



**ATTACHMENT A**

**SoundExchange's Written Rebuttal Statement Redaction Log**

<b>SoundExchange Witness</b>	<b>Paragraph/Page/Exhibit</b>	<b>Description and Basis for Redaction</b>
Introductory Memorandum	p.1 (one redaction) p.5 (second redaction)	Information designated Restricted by iHeartMedia pursuant to the Protective Order in this proceeding.
	p. 4 (two redactions) p. 5 (first redaction)	Restricted information concerning confidential negotiations and the terms of a confidential agreement between MERLIN and Pandora. Public disclosure of this information could place MERLIN, Pandora, or both of them at a competitive disadvantage.
	p. 6	Information designated Restricted by Pandora pursuant to the Protective Order in this proceeding
	p.14	Restricted information concerning confidential negotiations and the terms of a confidential agreement between Concord Music Group and iHeartMedia. Public disclosure of this information could place Concord, iHeartMedia, or both of them at a competitive disadvantage.

SoundExchange Witness	Paragraph/Page/Exhibit	Description and Basis for Redaction
Dennis Kooker	p. 15 (two redactions)	Restricted information disclosing confidential business data that Sony receives from a streaming service. Public disclosure would place Sony, the streaming service, or both at a competitive disadvantage.
	p. 19 (four redactions) p. 20 (seven redactions) Exhibit 9 Exhibit 10	Restricted information concerning the negotiation of confidential agreements between Sony and certain streaming services. Public disclosure of such information would place Sony, the services, or all of them, at a competitive disadvantage.
	Exhibit 11	Restricted information concerning the terms of confidential agreements between Sony and certain streaming services. Public disclosure of such information would place Sony, the services, or all of them, at a competitive disadvantage.
Aaron Harrison	¶ 11 (two redactions)	Restricted information disclosing confidential business data that Universal receives from a streaming service. Public disclosure would place Universal, the streaming service, or both at a competitive disadvantage.
	¶ 15 (two redactions) ¶ 16 (two redactions) Exhibit 1 Exhibit 7	Restricted information concerning the terms of confidential agreements between Universal and certain streaming services. Public disclosure of such information would place Universal, the services, or all of them, at a competitive disadvantage.

SoundExchange Witness	Paragraph/Page/Exhibit	Description and Basis for Redaction
	<p>¶ 23 (seven redactions)  ¶ 24 (four redactions)  ¶ 25 (four redactions)  ¶ 26 (three redactions)  ¶ 31 (four redactions)  ¶ 33 (two redactions)  ¶ 34 (one redaction)  ¶ 35 (two redactions)  Exhibit 2  Exhibit 3  Exhibit 4  Exhibit 5  Exhibit 6</p>	<p>Restricted information consisting of Universal's confidential negotiation positions, processes, strategies, and goals and details of negotiations with certain streaming services. Public disclosure would place Universal, the services, or all of them, at a competitive disadvantage.</p>
Ron Wilcox	<p>¶ 3 (four redactions)  ¶ 18 (first redaction)  Footnote 5</p> <p>¶ 5 (two redactions)  ¶ 6 (two redactions)  ¶ 10 (two redactions)  ¶ 11 (two redactions)  ¶ 12 (two redactions)  ¶ 13 (two redactions)  ¶ 22 (three redactions)  ¶ 23 (seven redactions)  Footnote 3  Footnote 4  Footnote 6  Footnote 8  Footnote 9</p>	<p>Information designated Restricted by iHeartMedia pursuant to the Protective Order in this proceeding.</p> <p>Restricted information concerning the terms of a confidential agreement between Warner and iHeartMedia. Public disclosure would place Warner, iHeartMedia, or both, at a competitive disadvantage.</p>

SoundExchange Witness	Paragraph/Page/Exhibit	Description and Basis for Redaction
	<p>¶ 7,  ¶ 8 (two redactions)  ¶ 15  ¶ 16  ¶ 18 (second redaction)  ¶ 19 (two redactions)  ¶ 24  ¶ 26 (two redactions)  ¶ 27 (two redactions)  Footnote 2  Footnote 7  Exhibit 1-7</p> <p>¶ 9 (two redactions)</p> <p>¶ 20  ¶ 21</p> <p>¶ 29 (three redactions)  ¶ 30 (two redactions)  Exhibit 8 - 11</p>	<p>Restricted information concerning confidential negotiations between Warner and iHeartMedia that, if disclosed, would reveal negotiating positions, negotiation strategies, confidential forecasts, and/or the terms of a confidential agreement. Disclosure of this information would place Warner and/or iHeartMedia at a competitive disadvantage.</p> <p>Restricted information regarding performance of a confidential agreement between Warner and iHeartMedia that, if disclosed, would place Warner and/or iHeartMedia at a competitive disadvantage.</p> <p>Restricted information concerning the terms of a confidential agreement between Warner and iHeartMedia and the negotiation of that agreement. In addition, information designated Restricted by iHeartMedia pursuant to the Protective Order in this proceeding. Disclosure of this information would place Warner and/or iHeartMedia at a competitive disadvantage.</p> <p>Restricted information concerning confidential negotiations and the terms of confidential agreements between Warner and certain streaming services that, if disclosed, would place Warner, the streaming</p>

SoundExchange Witness	Paragraph/Page/Exhibit	Description and Basis for Redaction
	Exhibit 12	<p>services, or all of them at a competitive disadvantage.</p> <p>Restricted information concerning the terms of confidential agreements between Warner and certain streaming services. Public disclosure would place Warner, the streaming services, or all of them, at a competitive disadvantage.</p>
Charlie Lexton	<p>¶ 26 (first redaction) ¶ 45</p> <p>¶ 4 (two redactions) ¶ 5 ¶ 18 (third redaction) ¶ 20 (three redactions) ¶ 21 (ten redactions) ¶ 22 (three redactions) ¶ 23 (five redactions) ¶ 24 (two redactions) ¶ 25 (two redactions) ¶ 26 (second and third redactions) ¶ 28 (five redactions) ¶ 29 (six redactions) ¶ 30 (four redactions) ¶ 31 (ten redactions) ¶ 32 (four redactions) ¶ 33 (six redactions) ¶ 35 (three redactions) ¶ 37 (three redactions)</p>	<p>Restricted information consisting of MERLIN's confidential negotiation positions, processes, strategies, and goals. Public disclosure would place MERLIN at a competitive disadvantage.</p> <p>Restricted information concerning confidential negotiations and the terms of a confidential agreement between MERLIN and Pandora. Public disclosure of this information could place MERLIN, Pandora, or both of them at a competitive disadvantage.</p>

SoundExchange Witness	Paragraph/Page/Exhibit	Description and Basis for Redaction
	<p>¶ 38 (three redactions)  ¶ 39  ¶ 41  ¶ 42  ¶ 44 (two redactions)  ¶ 46  ¶ 47 (two redactions)  ¶ 48 (four redactions)  ¶ 52 (eight redactions)  ¶ 53 (four redactions)  ¶ 54 (two redactions)  ¶ 55 (six redactions)  ¶ 56 (four redactions)  ¶ 57 (four redactions)  ¶ 58 (three redactions)  ¶ 59 (two redactions)  ¶ 63 (two redactions)  Exhibits 1-6</p>	
	<p>¶ 18 (second redaction)  ¶ 60 (two redactions)  ¶ 61  ¶ 62</p>	<p>Restricted information regarding performance of a confidential agreement between MERLIN and Pandora that, if disclosed, would place MERLIN, Pandora, or both of them at a competitive disadvantage.</p>
	<p>¶ 10  ¶ 13 (four redactions)  ¶ 16 (two redactions)  ¶ 17 (two redactions)  ¶ 18 (first redaction)</p>	<p>Restricted information concerning MERLIN's business and structure, including confidential information regarding membership, market share, and agreements between MERLIN and its members. Public disclosure would place MERLIN, its members, or all of them at a competitive disadvantage.</p>

SoundExchange Witness	Paragraph/Page/Exhibit	Description and Basis for Redaction
	Exhibit 7	Restricted information containing the terms of confidential agreements between MERLIN and certain digital music services. Public disclosure of this information could place MERLIN, the digital music services, or both at a competitive disadvantage.
Glen Barros	<p>¶ 3 (two redactions)  ¶ 20 (second and third redaction)  ¶ 21 (second redaction)  ¶ 30 (two redactions)  Exhibit 1  Exhibit 3</p> <p>¶ 11 (three redactions)</p> <p>¶ 15 (five redactions)  ¶ 16 (three redactions)  ¶ 17 (one redaction)  ¶ 18 (one redaction)  ¶ 19 (first, second, and fourth redaction)  ¶ 20 (first and fourth through eighth redactions)  ¶ 21 (first redaction)  ¶ 22 (two redactions)  ¶ 24 (three redactions)  Exhibit 2</p>	<p>Restricted information concerning the terms of a confidential agreement between Concord Music Group, Inc. and iHeartMedia. Public disclosure of this information could place Concord, iHeartMedia, or both of them at a competitive disadvantage.</p> <p>Restricted information concerning Concord Music Group, Inc.'s repertoire. Public disclosure of this information could place Concord at a competitive disadvantage.</p> <p>Restricted information concerning confidential negotiations between Concord Music Group, Inc., and iHeartMedia that, if disclosed, would reveal negotiating positions, negotiation strategies, confidential forecasts, and/or the terms of a confidential agreement. Disclosure of this information would place Concord, iHeartMedia or both of them at a competitive disadvantage.</p>

SoundExchange Witness	Paragraph/Page/Exhibit	Description and Basis for Redaction
	¶ 19 (third redaction)	Restricted information regarding performance of a confidential agreement between Concord Music Group, Inc. and iHeartMedia that, if disclosed, would place Concord, iHeartMedia, or both of them at a competitive disadvantage.
	¶ 26 (three redactions)	Restricted information concerning confidential negotiations between Concord Music Group, Inc., and a digital music service that, if disclosed, would reveal negotiating positions. Disclosure of this information would place Concord, the digital music service, or both at a competitive disadvantage.
	¶ 27 (one redaction) ¶ 28 (one redaction)	Restricted information concerning the terms of a confidential agreement between MERLIN and Pandora. Public disclosure of this information could place MERLIN, Pandora, or both of them at a competitive disadvantage.
	¶ 29 (three redactions)	Restricted information concerning the confidential terms of Concord Music Group, Inc.'s direct licenses with certain streaming services. Public disclosure of this information could place Concord, the streaming services, or all of them at a competitive disadvantage.



SoundExchange Witness	Paragraph/Page/Exhibit	Description and Basis for Redaction
Simon Wheeler	¶ 5 (two redactions) ¶ 7 (three redactions) ¶ 8 (one redaction) ¶ 9 (two redactions) ¶ 10 (two redactions) ¶ 11 (four redactions) ¶ 16 (first, second, fourth, and fifth redactions) ¶ 18 (six redactions) ¶ 20 (one redaction) ¶ 23 (four redactions)	Restricted information concerning the terms of a confidential agreement between MERLIN and Pandora. Public disclosure of this information could place MERLIN, Pandora, or both of them at a competitive disadvantage.
	¶ 16 (third and sixth redactions) ¶ 25 (one redaction) ¶ 26 (two redactions) ¶ 27 (two redactions)	Restricted information regarding performance of a confidential agreement between MERLIN and Pandora that, if disclosed, would place MERLIN, Pandora, or both of them at a competitive disadvantage.
	¶ 28 (one redaction)	Restricted information concerning confidential negotiations between Beggars Group and Pandora that, if disclosed, would place Beggar's Group, Pandora, or both of them at a competitive disadvantage
Darius Van Arman	p. 1 p. 2 p. 4 (two redactions) p. 5 (four redactions) p. 6 (first four redactions) p. 7 (third redaction) p. 8	Restricted information concerning the terms of confidential agreements between MERLIN and certain streaming services. Public disclosure of such information would place MERLIN, the services, or all of them, at a competitive disadvantage.
	p. 6 (fifth and sixth redactions)	Restricted information regarding performance of a confidential

SoundExchange Witness	Paragraph/Page/Exhibit	Description and Basis for Redaction
	p. 7 (first, second, and fourth redactions)	agreement between MERLIN and Pandora that, if disclosed, would place MERLIN, Pandora, or both of them at a competitive disadvantage
Jennifer Fowler	<p>¶ 7 (one redaction)  ¶ 10 (two redactions)  ¶ 13 (one redaction)  ¶ 15 (one redaction)  p. 7 (two redactions)  Exhibit 1  Exhibit 2  Exhibit 5</p> <p>¶ 14  Exhibit 4</p>	<p>Restricted information disclosing confidential business data that Sony receives from certain streaming services. Public disclosure would place Sony, the streaming services, or both at a competitive disadvantage.</p> <p>Restricted information regarding internal strategy to promote specific artist on an on demand streaming Service. Disclosure of this information could place the artist, Sony, the streaming service, or all of them at a competitive disadvantage.</p>
Jonathan Bender	p. 2 (two redactions) p. 19 (six redactions)	Restricted information concerning the webcasting royalties received under the statutory license by a particular artist, Doria Roberts. Disclosure of this information could put Ms. Roberts at a competitive disadvantage in future licensing or royalty negotiations and could reduce SoundExchange's ability to provide the Judges with such information in the future.

SoundExchange Witness	Paragraph/Page/Exhibit	Description and Basis for Redaction
Daniel Rubinfeld, Ph.D.	p. 14 (heading 6) p. 15 (heading 7) p. 33 (heading 4) ¶ 3 ¶ 28 (two redactions) ¶ 50 ¶ 51 ¶ 52 ¶ 56 ¶ 58 ¶ 59 ¶ 64 ¶ 67 ¶ 69 ¶ 70 ¶ 71 ¶ 72 ¶ 75 ¶ 77 ¶ 120 ¶ 121 ¶ 127 ¶ 128 (two redactions) ¶ 129 ¶ 139 (three redactions) ¶ 161 ¶ 162 (two redactions) ¶ 163 ¶ 172 ¶ 175 ¶ 176 ¶ 180 ¶ 181 ¶ 182 ¶ 183 (table) ¶ 184 (four redactions) ¶ 185 ¶ 188 (two redactions) ¶ 189 ¶ 193 ¶ 194 (two redactions) ¶ 195 (five redactions) ¶ 197 ¶ 200	Restricted information concerning the terms of confidential agreements between record companies and digital music services. Public disclosure would place the record companies, the digital music services, or both at a competitive disadvantage.

SoundExchange Witness	Paragraph/Page/Exhibit	Description and Basis for Redaction
	<p>¶ 201  ¶ 250  Footnote 3  Footnote 20  Footnote 25  Footnote 29  Footnote 30  Footnote 32  Footnote 33  Footnote 35  Footnote 37  Footnote 38  Footnote 41  Footnote 42  Footnote 47  Footnote 53  Footnote 54  Footnote 56  Footnote 60  Footnote 96  Footnote 116  Footnote 117  Footnote 143  Footnote 144  Footnote 145  Footnote 152  Footnote 156  Footnote 157  Footnote 158  Exhibit 8  Exhibit 10  Exhibit 12  Exhibit 16</p> <p>p. 9 (heading 3)  ¶ 23 (first redaction)  ¶ 25 (two redactions)  ¶ 30  ¶ 31  ¶ 32  ¶ 33  ¶ 34</p>	<p>Information or analysis of  information designated Restricted by  iHeartMedia and/or Pandora pursuant  to the Protective Order in this  proceeding.</p>

SoundExchange Witness	Paragraph/Page/Exhibit	Description and Basis for Redaction
	¶ 35	
	¶ 36	
	¶ 37 (two redactions)	
	¶ 38	
	¶ 39	
	¶ 40	
	¶ 41	
	¶ 42	
	¶ 43	
	¶ 44 (first redaction)	
	¶ 47 (first and third redactions)	
	¶ 48 (four redactions)	
	¶ 53 (two redactions)	
	¶ 54 (two redactions)	
	¶ 55	
	¶ 57	
	¶ 59	
	¶ 60	
	¶ 65	
	¶ 68	
	¶ 76	
	¶ 79 (three redactions)	
	¶ 80	
	¶ 81	
	¶ 84	
	¶ 87	
	¶ 88	
	¶ 90	
	¶ 91 (two redactions)	
	¶ 92	
	¶ 106 (two redactions)	
	¶ 142	
	¶ 143	
	¶ 144	
	¶ 145	
	¶ 146 (two redactions)	
	¶ 147 (two redactions)	
	¶ 148	
	¶ 149	
	¶ 150	
	¶ 237	
	¶ 249	
	Footnote 4	

SoundExchange Witness	Paragraph/Page/Exhibit	Description and Basis for Redaction
	Footnote 23 Footnote 24 Footnote 34 Footnote 45 Footnote 52 Footnote 63 Footnote 65 Footnote 79 Footnote 80 Footnote 81 Footnote 122 Footnote 124 Exhibit 2 Exhibit 3 Exhibit 4 Exhibit 5 Exhibit 6 Exhibit 7 Exhibit 9 Exhibit 11 Exhibit 13 Exhibit 17	
	¶ 23 (second redaction) ¶ 44 (second redaction) ¶ 45 ¶ 49 Footnote 12 Footnote 26 Footnote 28 Footnote 31 Exhibit 1	Restricted information concerning Warner's forecasts and models relating to the confidential negotiation of Warner's agreement with iHeartMedia. Disclosure of this information would place Warner, iHeartMedia, or both of them at a competitive disadvantage.
	¶ 47 (second redaction)	Restricted information regarding performance of a confidential agreement between Warner and iHeartMedia that, if disclosed, would place Warner, iHeartMedia, or both of them at a competitive disadvantage.

SoundExchange Witness	Paragraph/Page/Exhibit	Description and Basis for Redaction
	¶ 125 (six redactions)	Restricted information concerning confidential negotiations between certain record companies and certain digital music services. Public disclosure would place the record companies, the digital music services, or both at a competitive disadvantage.
	¶ 168 (two redactions) ¶ 169 Exhibit 14	Calculations based on restricted information concerning confidential revenue data for Pandora and Spotify.
	Attachment – Materials Reviewed & Relied Upon	Description of documents previously designated Restricted by a participant pursuant to the Protective Order in this proceeding.
	Appendix 1 Exhibit 15	Restricted information comprising confidential performance data for major labels' direct licenses with digital music services.
	Appendix 2, 2a, 2b, and 2c	Provisional redaction of comparable license analysis pursuant to confidentiality provisions.

SoundExchange Witness	Paragraph/Page/Exhibit	Description and Basis for Redaction
Eric Talley, Ph. D.	Footnote 52	Restricted information provided to MERLIN by Pandora regarding share of independent label plays on Pandora. Public disclosure would place MERLIN, Pandora, or both of them at a competitive disadvantage.
	p. 26 (two redactions) Footnote 33	Restricted information concerning the terms of a confidential agreement between MERLIN and Pandora. Public disclosure of such information would place MERLIN, Pandora, or both of them, at a competitive disadvantage.
	p. 25 (one redaction, not including footnote 52) p. 30 p. 31 (four redactions, including footnote 59) Exhibit 1	Information designated Restricted by Pandora pursuant to the Protective Order in this proceeding.
Thomas Lys, Ph. D.	p. iii (three redactions) p. ii (two redactions) ¶ 17 ¶ 31 ¶ 32 ¶ 36 ¶ 65 ¶ 66 ¶ 83 ¶ 84 ¶ 85 ¶ 86 ¶ 87 ¶ 88	Information designated Restricted by Pandora pursuant to the Protective Order in this proceeding.



SoundExchange Witness	Paragraph/Page/Exhibit	Description and Basis for Redaction
	¶ 89 ¶ 94 ¶ 237 ¶ 238 ¶ 259 ¶ 264 Footnote 37 Footnote 49 Footnote 77 Footnote 78 Footnote 81 Footnote 94 Footnote 108 Footnote 188 Footnote 216 Footnote 217 Footnote 226 Footnote 230 Figure 2 Figure 23 Figure 24 Figure 39 Figure 40	
	¶ 139 Footnote 152	Information designated Restricted by iHeartMedia pursuant to the Protective Order in this proceeding.
	Exhibits 5, 6	Proprietary analyst reports that, if disclosed in their entirety, would destroy their commercial value and interfere with SoundExchange's ability to obtain such information in the future.

SoundExchange Witness	Paragraph/Page/Exhibit	Description and Basis for Redaction
Marc Rysman, Ph. D.	¶ 9 ¶ 80 Footnote 4 Footnote 108 Exhibit 3	Information designated Restricted by iHeartMedia pursuant to the Protective Order in this proceeding.
	¶ 52 ¶ 53 ¶ 54 ¶ 56 ¶ 63 ¶ 65 ¶ 66 ¶ 71 ¶ 75 ¶ 79 ¶ 83 ¶ 84 Footnotes 56 – 62 Footnote 64 Footnote 66 Footnote 76 Footnote 77 Footnote 81 Footnote 90 Footnote 91 Footnotes 93 – 97 Footnote 106 Footnote 107 Footnote 120 Footnote 124 Footnote 125, Exhibit 4 Exhibit 5 Exhibit 6 Exhibit 7 Exhibit 8 Exhibit 9	Information designated Restricted by Pandora pursuant to the Protective Order in this proceeding.

SoundExchange Witness	Paragraph/Page/Exhibit	Description and Basis for Redaction
David Blackburn, Ph.D.	p. 2 (heading IV.D.1) p. 22 (heading IV.D.1) ¶ 5 (two redactions) ¶ 12 ¶ 13 ¶ 17 (two redactions) ¶ 18 ¶ 19 ¶ 20 ¶ 21 ¶ 29 ¶ 31 (two redactions) ¶ 32 (two redactions) ¶ 34 (two redactions) ¶ 38 ¶ 52 ¶ 53 (two redactions) ¶ 54 (four redactions) ¶ 55 (two redactions) Footnote 5, Footnote 6, Footnote 12, Footnote 13, Footnote 14, Footnote 15, Footnote 16, Footnote 20, Footnote 21, Footnote 22, Footnote 23, Footnote 24, Footnote 25, Footnote 26, Footnote 27, Footnote 30, Footnote 34, Footnote 37, Footnote 38, Footnote 39, Footnote 40, Footnote 41, Footnote 43, Footnote 44, Footnote 45,	Information designated Restricted by Pandora pursuant to the Protective Order in this proceeding.

SoundExchange Witness	Paragraph/Page/Exhibit	Description and Basis for Redaction
	Footnote 71, Footnote 72, Figure 8  Appendix 2	interfere with SoundExchange's ability to obtain like information in the future and place Warner at a competitive disadvantage.  Description of documents previously designated Restricted by a participant pursuant to the Protective Order in this proceeding.
Sarah Butler	¶ 19 ¶ 20 ¶ 21 ¶ 22 ¶ 25 (second redaction) Footnote 9 Footnotes 11 - 19 Exhibit 3 Exhibit 4	Information designated Restricted by iHeartMedia pursuant to the Protective Order in this proceeding.
	¶ 25 (first redaction) Footnote 21	Information designated Restricted by NAB pursuant to the Protective Order in this proceeding.
	¶ 25 (second redaction) ¶ 27 Footnote 22 Footnote 27	Information designated Restricted by Pandora pursuant to the Protective Order in this proceeding.
	¶ 28 (three redactions) Footnote 29 Footnote 30 Footnote 31 Footnote 32 Footnote 33	Restricted materials comprising proprietary information provided by a third-party research firm pursuant to a confidentiality agreement. Public disclosure of this information would interfere with SoundExchange's ability to obtain like information in the future

SoundExchange Witness	Paragraph/Page/Exhibit	Description and Basis for Redaction
	Footnote 26	<p>Restricted information comprising proprietary confidential research conducted by Universal Music Group. In addition, restricted information comprising proprietary confidential research conducted by Sony Music Entertainment. Disclosure of this information would interfere with SoundExchange's ability to obtain like information in the future and place Universal and Sony at a competitive disadvantage.</p>
	¶ 25 Footnote 20	<p>Restricted information comprising proprietary confidential research conducted by Sony Music Entertainment. Disclosure of this information would interfere with SoundExchange's ability to obtain like information in the future and place Sony at a competitive disadvantage.</p>
	Exhibit 2	<p>Description of documents previously designated Restricted by a participant pursuant to the Protective Order in this proceeding.</p>

## CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2015, I caused a copy of **SOUNDEXCHANGE'S PUBLIC WRITTEN REBUTTAL STATEMENT** to be served via electronic mail and overnight mail, to the Participants as indicated below:

### *Participants*

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*/s/ Rose Leda Ehler*

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